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Security Council

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Letter dated 10 April 2003 from the Permanent Representative of Somalia to the United Nations addressed to the President of the Security Council

I have the honour to transmit herewith the comments of my Government regarding the report of the Panel of Experts (S/2003/223 of 25 March 2003) established pursuant to Security Council resolution 1425 (2002) (see annex).

I should appreciate it if this letter and its enclosures were brought to the attention of Security Council members and issued as a document of the Council.

(*Signed*) Ahmed Abdi **Hashi**
Ambassador
Permanent Representative of the Somali Republic
to the United Nations

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Annex to the letter dated 10 April 2003 from the Permanent Representative of Somalia to the United Nations addressed to the President of the Security Council

The Transitional National Government (TNG) of Somalia welcomes the report of the Panel of Experts established pursuant to resolution 1425 (2002) of 22 July 2002 and the adoption of resolution 1474 (2003) of 8 April 2003. The TNG appreciates the deep concern expressed by the report of the Panel of Experts on the issue of the continuous flow of arms to Somalia in violation of Security Council resolution 733 (1992).

The TNG welcomes the extension of the Panel's mandate. The TNG, further, welcomes the Panel's findings that, among the neighbouring countries of Somalia, the Government of Ethiopia and its favourite Somali warlords continue to be the major violators of the arms embargo on Somalia.

The TNG concurs with the Panel's view that the arms embargo on Somalia be enforced with determination and sanctions be imposed against violators (States or individuals).

1. TNG cooperation

The Panel in its report "deemed that a number of States and the TNG have not lent their full cooperation to its investigation". The Panel did not visit Mogadishu because they were not allowed to by the United Nations for security reasons. However, the Panel met in Eldoret, Kenya, with senior TNG officials attending the Somali National Reconciliation Conference.

During the meeting in Eldoret, Kenya, the TNG government officials offered full cooperation to the Panel of Experts.

The only bone of contention was a letter dated 27 December 2002 addressed to the TNG by the Panel, which is attached here for ease of reference. This letter requested, among other things, that the TNG provide "documents reflecting the full accounting with all income and disbursements of the TNG since its inception and expenditures of the TNG since its establishment".

The TNG found the requests contained in this letter outside the purview of the Panel and extremely intrusive. In the view of the TNG, it is one thing to request information on weapons procurement programmes and amounts spent on these programmes if any. It is another issue when the Panel, as a self-appointed auditor, requests documents "reflecting the full accounting of all income and disbursements" of a foreign Government. The TNG believes that the contents of the Panel's letter under reference were inappropriate and therefore did not merit any response. In this context, the TNG reiterates its support for the Panel of Experts and will continue to fully cooperate with the Panel.

2. Assistance to the TNG

The Panel reports that some countries have provided the TNG with some military assistance in "the form of uniforms, police training and small arms".

First, as a result of the collapse of the Somali State in 1990, the Somali National Army and its police disintegrated. The TNG at its inception in 2000 and

thereafter did not create a national army. In the absence of such an army, the need for military assistance ceases to exist.

Secondly, the TNG created a police force to maintain law and order without which no government in any country would function. Such a force needs uniforms, training, etc.

Thirdly, the TNG wishes to draw attention to the scope of paragraph 5 of Security Council resolution 733 (1992), which was updated by the adoption of Security Council resolution 1356 (2001). Paragraphs 2 and 3 of this resolution provided for certain exceptions to the arms embargo on Somalia, which did not include or exclude any form of military training or technical assistance. Furthermore, resolution 1356 (2001) excluded "non-lethal military equipment intended solely for humanitarian or protective use". Police uniforms provided to the TNG by friendly countries are non-lethal and are for both protection and humanitarian uses.

Fourthly, the Security Council in its presidential statement S/PRST/2001/30 of October 2001 requested the Secretary-General inter alia to take the following steps in support of the peace process in Somalia: "prepare proposals for how the United Nations may further assist in the demobilization of militia members and the training of police personnel from the Transitional National Government".

The Security Council, in its presidential statement S/PRST/2002/8 further requested the Secretary-General inter alia to include in "preparatory activities on the ground for a comprehensive peace-building mission" the following element:

> Training of police with a view to establishing uniform standards of law enforcement throughout Somalia.

The conclusion here is clear. The training of a police force and provision of uniforms for such a force do not constitute violations of the arms embargo and are consistent with the exceptions of Security Council resolution 1356 (2001) of 19 June 2001 and the Council's requests to the Secretary-General as contained in the presidential statements quoted above.

3. Caretaker agencies

The Panel of Experts recommends the creation of "regulatory caretaker agencies" for Somalia: a Somali Airspace Authority, a Maritime Administration Caretaker Authority and a Somali Fiduciary Fund. The TNG has very serious concerns about these recommendations.

First, there is no legal basis or precedent for the creation of these "caretaker agencies" for a member of the United Nations. Such an undertaking, in our view, would infringe on the sovereignty and independence of Somalia.

Secondly, there is a viable and more practical option to these "caretaker agencies", namely the further empowerment of the TNG by the international community through effective and sustained contribution to the establishment and strengthening of institutions.

Thirdly, the establishment of any such "caretaker agencies" would impose unnecessary restrictions on the functioning of the TNG or for that matter any

government of national unity that may emerge from the ongoing Somali Reconciliation Conference in Kenya.

The TNG wishes to express its appreciation to the Security Council for not including this particular recommendation in its resolution 1474 (2003).

4. Arms embargo/disarmament

The Panel of Experts recommended that "a list of individuals who are deemed to be in clear violation of the arms embargo" be drawn up with a view to imposing targeted sanctions.

The TNG supports this proposal. However, it is equally important that the Security Council Committee established pursuant to resolution 751 (1992) concerning Somalia draw up a list of State(s) that violate the arms embargo with a view to imposing sanctions on such States.

In the Somali conflict, most warlords lack enough financial resources to buy weapons from outside Somalia. They rely on the State(s) that sponsor them such as Ethiopia. Shutting off this major source of weapons supply is absolutely essential and will be the first step towards disarmament in Somalia.

The Panel's report finds one such State that continues to be in violation of the arms embargo on Somalia for a long time. That State is Ethiopia. We urge the Security Council to take appropriate measures by imposing sanctions against Ethiopia.

Finally, the Transitional National Government of Somalia wishes to reiterate its willingness to fully cooperate with the Panel with a view to promoting peace and security in Somalia.

Enclosure

27 December 2002

Excellency,

I have the honor to address you in my capacity as member of the Panel of Experts established pursuant to Security Council Resolution 1407 (2002) concerning Somalia (S/2002/951). We have the mandate to investigate methods of arms transfers into Somalia, and the financing of these transfers, which are in violation of UN Security Council Resolution 733 (1992) from 23 January 1992. The results of our investigation will be reported to the UN Security Council by end of February.

In order to establish a clear understanding of all funding patterns, which may contribute to hostilities in Somalia, we request the following from officials of the TNG:

- Documents reflecting the full accounting with all income and disbursements of the TNG since its inception, reflecting the complete financial income and expenditures of the TNG since its establishment;
- All documents reflecting efforts by the TNG to obtain or effect the release of funds or properties which by order of foreign jurisdictions were frozen or seized during past Somali governments;
- A list of all properties either currently in official use by TNG representatives as well as any agreements which may have been generated by TNG or its officials in the process of divesting such properties either in Somalia or in any other country;
- All documents or memoranda received or generated by TNG or its officials as part of efforts to procure new Somali currency and
- All documents or memoranda received or generated by TNG or its officials in its efforts to obtain armaments, munitions, as well as recruit military assistance or protection services.

We would appreciate it if the TNG will contact Mr. Enrico Carisch, Consultant to the Panel of Experts on Somalia on arrangements for the submission of documents. His e:mail address is rico.carisch@rcn.com. As you are well aware of the urgency of this request, I would be grateful if these documents could be provided but no later than 15 January 2003.

Please accept, Excellency, the assurances of my highest consideration.

Ernst Jan Hogendoorn
Member, UN Panel of Experts on Somalia
Security Council resolution 1425 (2002)

His Excellency
Mr. Ahmed Abdi Hashi
Permanent Representative of Somali Republic
to the United Nations
New York